

VZCZCXRO0936  
OO RUEHNH  
DE RUEHML #5071 3550921  
ZNY CCCCC ZZH  
O 210921Z DEC 06  
FM AMEMBASSY MANILA  
TO RUEHC/SECSTATE WASHDC IMMEDIATE 4367  
INFO RUEHNH/AMCONSUL NAHA IMMEDIATE 0070  
RHHMUNA/CDRUSPACOM HONOLULU HI IMMEDIATE  
RUEKJCS/SECDEF WASHDC IMMEDIATE

C O N F I D E N T I A L MANILA 005071

SIPDIS

SIPDIS

E.O. 12958: DECL: 12/21/2016  
TAGS: [PREL](#) [MARR](#) [CASC](#) [RP](#)  
SUBJECT: MARINE CASE: JUDICIAL PROCESSES TO DECIDE CUSTODY  
ISSUE

REF: MANILA 5039

Classified By: Ambassador Kristie A. Kenney, reasons 1.4 (b) and (d)

¶1. (C) Ambassador on December 21 discussed with President Arroyo latest developments in the judicial deliberations on the custody issue involving Lance Corporal Smith, underscoring the importance of living up to the obligations under the Visiting Forces Agreement. President Arroyo assured the Ambassador that the Philippine government was "doing everything we can" to speed up this process and to ensure a quick and favorable decision.

¶2. (C) Following Ambassador's private meeting with Executive Secretary Ermita on December 20 (reftel), the Cabinet met to consider options available to the Philippine government to secure the transfer of custody back to the U.S. of LCpl. Smith in order to uphold its commitments under the VFA. After heated debate, with the National Security Advisor and Secretary of Interior and Local Government (whose department oversees the police and the prison system) pushing for possibly extralegal actions in defiance of the Regional Trial Court's order, the Cabinet decided to instruct the Solicitor General to work to obtain immediate and favorable action by the Court of Appeals, or, if need be, by the Supreme Court. There was general concern that any other course of action could backfire on obtaining a favorable ruling and could even more seriously jeopardize the VFA.

¶3. (U) Later on December 20, after meeting with Embassy's Justice Attache, the Philippine Solicitor General filed a "Very Urgent Manifestation and Motion" to the Court of Appeals, confirming that both the U.S. and Philippine governments, represented by the Ambassador and the Foreign Secretary, were in full agreement that Lance Corporal Smith

SIPDIS  
should be returned to U.S. military custody at the U.S. Embassy in Manila in accordance with the VFA. On behalf of the Department of Foreign Affairs, the Solicitor General "urgently and respectfully" requested the Court of Appeals to turn LCpl. Smith over to the U.S. Embassy "immediately."

¶4. (U) The DFA, working with the Solicitor General, is also preparing additional comments to submit to the Court of Appeals within ten days on the custody issue and on VFA obligations, should the Court of Appeals not grant a Temporary Restraining Order against the December 4 order of custody by the Regional Trial Court. (The Court of Appeals has ruled against the motion for a TRO by the attorneys for LCpl. Smith but now has the option of responding to the Solicitor General's manifestation.)

¶5. (C) According to the Solicitor General, the government will submit a motion in early January to transfer jurisdiction of the case directly to the Supreme Court if the

Appeals Court has not by then ruled favorably on the custody issue. The Supreme Court will go back in session in mid-January.

Visit Embassy Manila's Classified SIPRNET website:  
<http://www.state.sgov.gov/p/eap/manila/index.cfm>

You can also access this site through the State Department's  
Classified SIPRNET website:  
<http://www.state.sgov.gov/>  
KENNEY